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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/827,565	04/19/2004	Joseph C. Eder	1001.1750101	3215

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EXAMINER

BOUCHELLE, LAURA A

ART UNIT	PAPER NUMBER
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3763

MAIL DATE	DELIVERY MODE
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02/02/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/827,565	Applicant(s) EDER, JOSEPH C.	
	Examiner LAURA A. BOUCHELLE	Art Unit 3763	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 November 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-5,10-27,29 and 30 is/are pending in the application.
- 4a) Of the above claim(s) 17-27,29 and 30 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-5,10-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11/9/09 has been entered.

Claim Rejections - 35 USC § 103

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 1, 3-5, 10-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zadno-Azizi et al (US 6022336) in view of Cragg et al (US 6146373) in view of Banka (US 4299226). Zadno-Azizi discloses an intravascular catheter comprising a first tubular member 20 having an inner wall surface, a second tubular member 22 having an outer wall surface, the distal end region of the second tubular member extends distally beyond the distal end of the first tubular member, and a microcatheter 24 disposed in the lumen of the second catheter.
3. Claim 1 calls for a portion of the outer wall surface of the second tubular member to be bonded to a portion of the inner wall surface of first tubular member. Zadno-Azizi fails to disclose that the outer wall of the second tubular member is bonded to the inner wall of the first tubular member. Zadno-Azizi does disclose that the configuration shown in Fig. 2 is an ideal condition that maximizes the lumen pathways (col. 7, lines 60-65, col. 8, lines 46-48). Cragg discloses a catheter system for emboli containment having a first tubular member and a second tubular member, the first and second tubular members may be configured in multiple

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configurations including a configuration wherein the members are not attached to each other (Fig. 7) similar to that of Zadno-Azizi, and multiple configurations (fig. 9, fig. 11) wherein the outer wall of the first tubular member is bonded to a portion of the inner wall of the second tubular member. The embodiment of Fig. 9 may include means for adjusting the longitudinal position of one of the lumens with respect to the other lumen (col. 11, lines 30-32) so the device may be used in the same manner as that of Zadno-Azizi. Therefore, it would have been obvious to one of ordinary skill in the art to fix the tubular members together as taught by Cragg in the orientation shown by Zadno-Azizi to maximize the lumen openings to ensure that the viscous fluid can flow through the lumen and the flow rates can be reliably determined.

4. Claim 1 calls for the second tubular member to extend about ten centimeters or more distally beyond the distal end region of the first tubular member. Zadno-Azizi discloses that the second tubular member extends past the first tubular member a distance sufficient to span an occlusion, but fails to disclose the specific distance. Banka teaches a device having a first and second tubular member, wherein the second tubular member extends at least 10 centimeters beyond the distal end of the first tubular member so that the device can be used to clear an obstruction. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention that the second tubular member of Zadno-Azizi would extend at least 10 cm beyond the distal end of the first tubular member as taught by Banka because that is the distance required to treat an occlusion in a vessel.

Response to Arguments

2. Applicant's arguments, see pages 7, 8, filed 7/9/09, with respect to the rejection(s) of claim(s) 1 under Zadno-Azizi have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Cragg.

5. With reference to Fig. 2, Zadno-Azizi discloses that this configuration – the outer wall of the inner lumen touching the inner wall of the outer lumen – is an ideal condition which maximizes the size of the openings and the pathways between the members (col. 8, lines 46-48). Cragg teaches that this configuration is possible while maintaining the ability to adjust the longitudinal position of the lumens with respect to each other (col. 11, lines 30-32). Therefore, the motivation to combine these teachings is found in the disclosure of Zadno-Azizi.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LAURA A. BOUCHELLE whose telephone number is (571)272-2125. The examiner can normally be reached on Monday-Friday 8-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on 517-272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Laura A Bouchelle
Examiner
Art Unit 3763

/Laura A Bouchelle/
Examiner, Art Unit 3763

/Nicholas D Lucchesi/
Supervisory Patent Examiner, Art Unit 3763